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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 J. MITCH HALL and NATHAN KAY,

9 Plaintiffs,

10 v.

11 L-3 COMMUNICATIONS

12 CORPORATION, L-3

13 COMMUNICATIONS VERTEX

14 AEROSPACE, LLC and L-3

15 COMMUNICATIONS INTEGRATED

16 SYSTEMS L.P.

17 Defendants.
18

NO. 2:15-cv-00231-SAB

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT**

19 Before the Court is Defendants' Motion to Dismiss Plaintiffs' First
20 Amended Complaint. ECF No. 25. The motion was heard without oral argument.

21 Defendants assert Plaintiffs' claims against them should be dismissed on
22 two grounds. First, Defendants argue the claims should be dismissed for lack of
23 personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2). Second, Defendants
24 claim the Eastern District of Washington does not meet venue requirements for
25 either state or federal claims under Fed. R. Civ. P. 12(b)(3).

26 ***Personal Jurisdiction***

27 This federal court uses Washington's long-arm statute when considering
28 personal jurisdiction. RCW 4.28.185(1). The statute runs to the full extent of

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1 federal due process. *Chan v. Soc. Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir.
2 1994). Personal jurisdiction may be either general or specific. *See Helicopteros*
3 *Nacionales de Colombia, S.A., v. Hall*, 466 U.S. 408, 414, n.9 (1984). Here,
4 specific jurisdiction is in question. The Court must analyze two issues in
5 considering whether the Defendants have purposefully established the minimum
6 contacts with the forum state necessary to result in specific jurisdiction: (1)
7 whether the Defendants purposefully directed their activities at residents of the
8 forum, and (2) whether this litigation is a result of alleged injuries arising out of or
9 related to those activities. *Genetic Veterinary Sciences, Inc. v. Canine EIC*
10 *Genetics, LLC*, No. 13-cv-422-TOR, 2014 WL 2894301, at *4 (E.D. Wash. June
11 25, 2014) (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 472-73 (1985)). If
12 these factors are met, the Court considers whether specific jurisdiction would
13 comport with fair play and substantial justice required for due process to be
14 satisfied. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

15 When using affidavits, plaintiffs must demonstrate facts that if true would
16 support jurisdiction. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). Any
17 uncontroverted allegations in the complaint are taken as true; conflicts between
18 parties' affidavits are resolved in plaintiff's favor; and the Court construes all
19 evidentiary materials in the light most favorable to plaintiff. *Gordon v. Ascentive,*
20 *LLC*, No. CV-05-5079-FVS, 2005 WL 3448025, at *1 (E.D. Wash. Dec. 15, 2005)
21 (citing *Ochoa v. J.B. Martin & Sons Farms*, 287 F.3d 1182, 1187 (9th Cir. 2002)).

22 First, the Court must ask if each of the Defendants purposely directed their
23 activities at each of the Plaintiffs in the state. Hall avers he applied for
24 employment with L-3 while living in Washington, he was interviewed by
25 telephone and hired while in Washington, and he was paid in Washington.
26 Additionally, Hall alleges he has obtained flight physicals at L-3's behest both in
27 Washington and in Idaho. Apparently, L-3 also continues to actively recruit within
28 the state. Although L-3's actions do not rise to the level sufficient to subject L-3 to

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1 general personal jurisdiction in Washington, it certainly had some meaningful
2 contacts with the State.

3 The question remains whether this litigation is a result of alleged injuries
4 arising from those activities. The answer is clearly yes. Hall's alleged injury is the
5 failure of L-3 to continue to schedule him for employment. L-3's purposeful
6 contacts with the state (recruiting, interviewing, hiring, employing, and paying
7 Hall) are related to his alleged injury.

8 Finally, the Court must ask if exercising specific jurisdiction would comport
9 with fair play and substantial justice. *Int'l Shoe Co.*, 326 U.S. at 320. Here,
10 concerns of fair play militate in favor of finding specific jurisdiction in
11 Washington. By recruiting, interviewing, hiring, employing and paying Hall in
12 Washington, L-3 should have "anticipate[d] being haled into court" in Washington
13 for disputes that may arise out of Hall's employment. *World-Wide Volkswagen*
14 *Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Further, due process and notions of
15 fair play "allows flexibility in ensuring that commercial actors are not effectively
16 'judgment proof' for the consequences of obligations they voluntarily assume in
17 other states." *Rudzewicz*, 471 U.S. at 487.

18 Because L-3 established a substantial and continuing employment
19 relationship with Hall while he was located in Washington, specific jurisdiction
20 exists in this case arising out of a dispute relating to that employment relationship.
21 *See id.* at 487.

22 Defendants are three separate but related entities. Hall was originally hired
23 by L-3/Vertex and was later employed by L-3/CIS. Personal jurisdiction exists
24 over these entities for the reasons previously explained. According to Defendants,
25 Hall never was employed by L-3/CC, and L-3/CC never made any hiring or
26 employment decisions regarding Hall. In his verified complaint, however, Hall
27 alleges L-3/CC is the parent company of both L-3/CIS and L-3/Vertex. At this
28 stage in the litigation it is not clear to what extent L-3/CC was involved or

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1 exercises control over L-3/CIS or L-3/Vertex. The Court accepts, for purposes of
2 this motion, the allegations in Plaintiffs' verified complaint that L-3/CC exercised
3 control over Hall's employment opportunities. As litigation progresses it may
4 become clear that L-3/CC did not have any control over these employment
5 opportunities, but it would be inappropriate to make such a factual determination
6 at this stage. Additionally, a finding of personal jurisdiction over L-3/CC does not
7 substantially implicate due process concerns because L-3/CC, L-3/Vertex, and L-
8 3/CIS are inarguably closely related, share most of the same principals, and have
9 jointly retained counsel for this matter.

10 Plaintiff Kay's claim is based on L-3's failure to hire him upon his
11 application. Because Kay was never actually employed by L-3, L-3 participated in
12 substantially fewer purposeful activities in Washington with regard to Kay as
13 compared to Hall. However, L-3 does recruit in Washington and allowed Kay to
14 apply for employment from the state. Although the conduct is minimal, Kay's
15 claim directly arises from those contacts. Accordingly, this Court has specific
16 jurisdiction over L-3.

17 This case does not present a text-book example of personal jurisdiction,
18 however, personal jurisdiction does not turn on "mechanical tests." *Int'l Shoe*, 326
19 U.S. at 319. The Court finds that personal jurisdiction over each of the defendants
20 is fair and comports with due process, particularly in light of the Defendants
21 continuing recruitment and employment of Washington residents.

22 *Venue*

23 Defendants also move to dismiss the complaint pursuant to Fed. R. Civ. P.
24 12(b)(3) for improper venue. "[E]xcept as otherwise provided by law," venue is
25 typically governed by 28 U.S.C. § 1391. A dismissal under Fed. R. Civ. P.
26 12(b)(3) is only appropriate when venue is "wrong" or "improper." *Atl. Marine*
27 *Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 134 S. Ct. 568, 577 (2013).
28 Section 1391 lists three standards for where civil actions "may" be brought: a

1 judicial district where any defendant resides, if all defendants are residents of the
2 state in which the district is located; a judicial district in which a substantial part
3 of the events giving rise to the claim occurred, or where a substantial part of
4 property that is the subject of the action is located; or, if there is no other district in
5 which an action may otherwise be brought, any judicial district in which any
6 defendant is subject to the court's personal jurisdiction.

7 The Uniformed Services Employment and Reemployment Rights Act of
8 1994 ("USERRA"), from which much of Plaintiffs' claims derive, contains its own
9 venue provision. 38 U.S.C. § 4323(c). The USERRA venue provision provides
10 that "[i]n the case of an action against a private employer, the action may proceed
11 in the United States district court for any district in which the private employer of
12 the person maintains a place for business." § 4323(c)(2). According to Defendants,
13 this provision supersedes 28 U.S.C. § 1391(b) and applies here. Defendants assert
14 that none of them have a place of business in the Eastern District of Washington,
15 despite Plaintiffs' claim that L-3/Vertex does, and that L-3/CC is not a "private
16 employer" for USERRA purposes.

17 The USERRA venue provision does not constitute the entirety of where
18 USERRA claims can be brought. Instead, the USERRA provision, which is
19 permissive, not exclusive, provides an additional appropriate venue for such
20 claims. 38 U.S.C. § 4323(c)(2). The USERRA venue provision is permissive
21 because it uses the phrase "may proceed" rather than "must proceed" or "shall
22 proceed." *Id.* The Court finds it unlikely that Congress intended to greatly limit the
23 venue options a servicemember could access in the same law that provided them
24 with many special protections. Because the USERRA venue provision is different
25 than the provisions in 28 U.S.C. § 1391(b), a Fed. R. Civ. P. 12(b)(3) motion may
26 only be granted if the venue in question does not satisfy any of the three venue
27 provisions in § 1391 or the USERRA venue provision.

1 Here, the Court finds that a substantial part of the events or omissions
2 giving rise to the claim occurred within the Eastern District of Washington. These
3 events are recounted above. Additionally, Plaintiffs' service with the Washington
4 Air National Guard occurs within the Eastern District of Washington and is a
5 substantial part of their USERRA claims. Accordingly, the Court finds venue in
6 the Eastern District of Washington is appropriate under 28 U.S.C. § 1391(b)(2).

7 *Conclusion*

8 Defendants' motion to dismiss for lack of personal jurisdiction and for
9 improper venue is denied in full.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint,
12 ECF No. 25, is **DENIED**.

13 **IT IS SO ORDERED.** The District Court Executive is hereby directed to file this
14 Order and provide copies to counsel.

15 **DATED** this 15th day of March 2016.



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21 Stanley A. Bastian
22 United States District Judge
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